

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **SEN. CAROL WILLIAMS**, on March 9, 2005 at 3:35 P.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Brent R. Cromley, Chairman (D)  
Sen. John Cobb (R)  
Sen. John Esp (R)  
Sen. Duane Grimes (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Trudi Schmidt (D)  
Sen. Dan Weinberg (D)  
Sen. Carol Williams (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch  
Rita Tenneson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 183, 3/4/2005; HB 396, 3/4/2005;  
HB 437, 3/4/2005; HB 555, 3/3/2005  
Executive Action: HB 183; HB 437; HB 68; HB 318

**HEARING ON HB 183****Opening Statement by Sponsor:**

**REP. EVE FRANKLIN (D), HD 24**, opened the hearing on **HB 183**, Medicaid redesign: Severely emotionally disturbed children waiver proposal.

**REP. FRANKLIN** explained that severely emotionally disturbed children have not been included in some of the more innovative waiver projects until now. The bill gives the department a process to create a waiver to design appropriate services for these children.

**Proponents' Testimony:**

**Chuck Hunter, Department of Public Health and Human Services (DPHHS), Health Resources Division**, told the Committee the bill allows them to seek a home and community based waiver for seriously emotionally disturbed kids. Home and Community Based Waiver (HCDS) is a common waiver function within the federal rules about how waivers can be done. The goals for HCDS is to provide services, in a home or community, as opposed to an institutional based setting. These are for kids who need in-patient psychiatric services with hospitalization services, or at risk of needing those kinds of services. The waiver allows tailoring needs around the child and the family. There are about 9200 Severely Emotionally Disturbed (SED) kids being served on an annual basis and the department doesn't have the capacity to serve all of them. There will be a limit to the number of families and kids who can be served under the waiver. The 9200 will still be served, but only some of them will be served with the additional waiver services. The goal is to take kids in the high-cost institutionalized settings, the top 1% who take 80% of the services dollars, and move them into the community settings.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 7.6}***

**Jani McCall, MT. Children's Initiative Providers Association, Deaconess Billings Clinic**, rose in very strong support of the bill. The bill was from the Medicaid Redesign Committee and is important to children and their families. The bill provides flexibility to work with children and their families to use creative services to keep SED kids at home.

**Sami Butler, Intermountain Children's Home**, a campus based treatment program for SED children, rose in support. This is the flexibility needed to keep the kids in their homes so they do not

come to Intermountain. It is important not to separate the kids from the families.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. WEINBERG** asked **Ms. McCall** if the families wanted the kids to stay home or would some rather have the kids institutionalized. **Ms. McCall** said there is probably a mix, but many families are trying to keep their families together. These families need support because of the many issues they struggle with. Families receiving in-home services are being able to maintain their kids. They have surveyed 44 youths, who are with their families, and are looking at the characteristics that allow them to stay at home and why this is working. **SEN. WEINBERG** asked **Ms. McCall** if some of the SDC kid's problems are the results of difficult family dynamics. She answered, absolutely. A lot of kids have been exposed to abuse, neglect and trauma of an environmental nature. Some of these things are substance abuse, physical abuse, emotional and sexual abuse, families without income, families without jobs, lack of facilities and things of this nature.

**SEN. WEINBERG** questioned **Mr. Hunter** about whether the waiver would be cost effective regarding the expense for some of the complicated family dynamics. **Mr. Hunter** replied that the idea is not truly cost savings, though there will be cost savings in some cases. Some of the cases will cost more. The goal is aimed more at flexibility and the unique crafting of services in keeping kids closer to home. He would like to be able to spread more savings down from the pyramid of services and pick up more kids to put into the waiver services. **SEN. WEINBERG** asked if **Mr. Hunter** could guarantee that these services would prevail and **Mr. Hunter's** answer was, yes, that is their first consideration. The department will have to provide under any Medicaid setting services that are medically necessary. There are three states that have this waiver already and it is working in other states. There is New York, Vermont and Arizona.

**Closing by Sponsor:**

**REP. FRANKLIN** closed, saying to think it about this as continual care. These are kids with major disorders who may need institutionalization or hospitalization at some point. This waiver program hasn't been tried with children before, but has

worked with physically disabled adults and older, medically fragile adults.

**SEN. WILLIAMS** will carry the bill on the Senate floor.

### HEARING ON HB 396

*{Tape: 1; Side: A; Approx. Time Counter: 7.6 - 18.9}*

#### Opening Statement by Sponsor:

**REP. ARLENE BECKER (D), HD 52**, opened the hearing on **HB 396**, Asthma self-medication allowed in schools.

**REP. BECKER** told the Committee asthma is a chronic lung disease, which can be fatal in a short period of time, because of uncertainty of the severity when an attack occurs. There is need for immediate access to medication when a severe attack occurs. The bill sets up a process and method for children to carry their emergency asthma medications and take them. This process is set up within the bill.

#### Proponents' Testimony:

**Dick Paulsen, American Lung Association**, read a letter from **Darrell Rud, Executive Director of the School Administrators of Montana** and a letter from the **Allergy and Asthma Network**, the mothers of asthmatics national organization. The letters support the bill and point out the importance of children being able to have these medications. Tragic deaths have happened in schools as a result of students not having their medications readily available when a severe attack has occurred. There are thirty states who have passed asthma legislation. He handed out copies of asthma medication in schools sample forms showing authorization for use, student agreement on education, and an asthma action plan. Each form is color coded. On behalf of the 29,000 children, in Montana, with asthma and their families, the American Lung Association supports the bill.

[EXHIBIT \(phs52a01\)](#)

[EXHIBIT \(phs52a02\)](#)

[EXHIBIT \(phs52a03\)](#)

*{Tape: 1; Side: A; Approx. Time Counter: 18.9 - 29}*

**Becky Fleming-Siebenaler**, mother of two asthmatic children, read her testimony regarding the seriousness of children's asthma and their need for medication when having an attack.

**EXHIBIT** (phs52a04)

**Darrell Rud, School Administrators of Montana**, rose in support of **HB 396**. Mr. Rud is married to an asthmatic and was a school principal for 26 years. During his principalship he had experiences with asthmatic problems. In situations where it is difficult to get to a nurse's office or to get help, an attack can be life threatening.

**Bob Vogel, Montana School Boards Association**, in favor of the bill. He said the bottom of the first page of the bill, starting on line 28, there are a number of items that will become a paperwork burden for school districts. The lifesaving or health and safety measures in the bill, however, will far outweigh the paperwork issues. One of the most critical sections for the schools is the liability provision and waiver in the bill.

**Terry Minow, MEA-MFT**, teachers and classified school district employees across the State of Montana, rose in support. She said they echoed what **SEN. BECKER** and the previous proponents have said.

**Jo Ann Dotson, DPHHS**, read her statement in favor of the bill.

**EXHIBIT** (phs52a05)

**Sue Buswell, RN, Helena Public Schools School Nurse**, has a masters degree in pediatric nursing. The policy, in Helena, is to let students carry their asthma medications with them in the classrooms. This has worked out well. In an emergency situation, they prefer the kids have their meds and be able to use them. It is important the back-up medication be available for the student in the nurse's or principal's office, because some children may not have their medications with them.

**Jenifer Sheehy, Family Nurse Practitioner, Montana Nurses Association**, rose in support of the bill with the following exhibit from the membership of the Association.

**EXHIBIT** (phs52a06)

**Beda Lovitt, Montana Medical Association (MMA)**, rose in support.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. ESP** asked **REP. BECKER** if the amendments on page 2, lines 5 through 8 were put on in Committee or the Floor. **REP. BECKER** told him only one amendment had been put in on the floor. **SEN. ESP** asked what the reasoning was for the amendments. He asked **Mr. Vogel** about page 3, line 7 where it says to keep back up medication where a student will have immediate access. He thought if the medication had to be available immediately, it meant right now. **Mr. Vogel** said that would be a concern, but there is administration in every building and they will have to meet the challenge and have the medications available. He said one of the witnesses said they have five minutes. **SEN. ESP** said the word "immediate" was a concern. He asked **Ms. Buswell** if that concerned her. Her answer was that they keep the medicine at the main desk or principal's office and these people are trained in the use of the medications. In an emergency, it means getting word to the main desk and getting someone down there for medication. **SEN. ESP** asked if immediate access to the backup medication at a predetermined location in the school building was added, if it would be acceptable. **REP. BECKER** answered, yes. **REP. BECKER** then told **SEN. ESP** the reason the lines 5 through 8 were put in the bill was they didn't sign a waiver of liability. **SEN. ESP** asked if that could be done on line 28, page 1, where it says written authorization for self administration of medication and a waiver of liability. **SEN. BECKER** said that would probably be smoother.

**SEN. MOSS** wanted to know how the kids carried the medications, and whether they might share the medication with friends. **REP. BECKER** said in a fanny pack, pocket or purse. Children with asthma know the importance and know where it is and not to share it. It doesn't taste good and someone who didn't need it would get some unpleasant symptoms.

**SEN. GRIMES** asked about students carrying Benedril. **Mrs. Buzwell** said Benedril could be added, but we are talking about emergency medication. Benedril is not an emergency medication. If a child is going into anaphylactic shock or having difficulty breathing because of asthma, they need their inhaler or epi-pen. Those are emergency medications. **SEN. GRIMES** asked who would administer medication if a child was in anaphylactic shock and couldn't self administer their medication. **Mrs. Buzwell** said she understood that administering this to a child in that type of situation is covered under the liability issue.

**SEN. GRIMES** asked what happened if the wrong inhaler was used. He thought the bill should be amended to include, in the definition of self administration, "the assistance". **Mr. Paulsen** told him the bill was modeled after language in federal law. The intent

is the child should have medication rapidly, under direction of their physician, with no limitation for others trained in administering the medication in an emergency situation.

**SEN. WILLIAMS** asked **Mr. Paulsen** what his definition of immediately available was. He answered communication and it should be based on the needs of each individual child as each child's situation is different.

**Closing by Sponsor:**

**REP. BECKER** said in today's society there are medications kids need to have available. A year ago emergency diabetic situations were put into law. The liability section, page 2, section 16 through 18, of this bill, was modeled after language used in the glucagon statute of two years ago. For the liability provision to go through, a 2/3 vote of the Senate is necessary. She handed each of the senators a straw and asked them to hold their nose and breathe through it for 20 seconds, then imagine having to run down to the Governor's office to get their medication out of a drawer.

**SEN. SQUIRES** will carry the bill on the Senate floor.

**HEARING ON HB 437**

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 29}*

**SEN. CROMLEY** returned and opened the hearing on **HB 437**.

**Opening Statement by Sponsor:**

**REP. MARY CAFERRO (D)**, **HD 80**, opened the hearing on **HB 437**, Allow TANF electronic benefit transfer.

**REP. CAFERRO** said this bill cleaned up language to an outdated code. It clarifies that EBT (electronic benefit transfer) is an allowable method of benefit payment for TANF cash assistance. The EBT card has paid \$527,000 in benefit payments in January.

**Proponents' Testimony:**

**Hank Hudson, DPHHS**, said the bill refers to an antiquated part of the code referring to payments being mailed. They have gone to the EBT system. They will be issuing \$100 million a year in electronic food stamp benefits in the next biennium. It is a theft proof system and removes the delay of waiting for benefits by mail. They can't require it, but they encourage it.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. ESP** asked about another agency going to a similar system which was mandated and asked about the outcome of the lawsuit. **Mr. Hudson** thought the lawsuit was stalled but not acted upon. He said this was the Child Support Enforcement Division which issues all their benefits on this card and does not offer a choice.

**Closing by Sponsor:**

**REP. CAFERRO** asked the Committee to support **HB 437**. It is good for the department and good for families.

**HEARING ON HB 555**

**Opening Statement by Sponsor:**

**REP. MARY CAFERRO (D)**, **HD 80**, opened the hearing on **HB 555**, Create parents as scholars program.

**REP. CAFERRO** said in order for a parent to participate in a TANF program, a parent has to work 30 hours a week and, in a two parent home, 35 hours a week. The bill allows education to count as a work activity. Secondary education is a path out of poverty and provides economic security for families. Children who grow up with parents getting a degree are more apt to also get a degree.

***{Tape: 2; Side: B; Approx. Time Counter: 0 - 11.3}***

**Proponents' Testimony:**

**Kim Abbott, Working for Quality Education, Helena**, told the Committee the bill allows parents on TANF to go to school and increase their income. It moves families out of poverty. She gave the Committee a fact sheet on the background and success of the program. She gave the Committee a letter from **Danielle J. Bird**, who is a successful graduate of the program. She added that **Ms. Bird** couldn't be here, today, because she has a job as a teaching assistant. She is in graduate school and teaching a history class.

**EXHIBIT** (phs52a07)



**EXHIBIT** (phs52a08)

**Judy Smith, WORD and HomeWORD** a family advocacy program in Missoula and Billings, said they ran a model program in Missoula, at the beginning of the scholar program, working with people to either go to the University of Montana or find immediate employment. In Missoula, in the early 90's, women who finished school, had exiting job offers at \$10.61 an hour. Women who immediately got employment, without going to school, had job offers at \$6.15 an hour. She said this is a wise investment choice to encourage people to get out of poverty.

**Jessica Grennan, Associates of the University of Montana**, rose in strong support of parents of scholars. People who go to college have less of a chance to commit crime, give more money to charity, volunteer more for society, and often have children who go to college. This provides a society of people who go to college or post secondary training. She learned good study habits at an early age by observing her parents studying for college. This was ingrained in her and she went on to college.

**Eric Shiedemeyer, Montana Catholic Conference**, stated that the heart of the bill, in section 1 (d) is to promote self sufficiency and this is the goal of all recipients. This contributes to the dignity and self worth of individuals and families involved. He said giving a hand up, instead of a hand out, is a good activity for a young unmarried mother to focus her energies on, besides being a mother.

**Hank Hudson, DPHHS**, worked with the sponsor of the bill in reducing the cost of the bill by limiting childcare available. There is no additional child care costs because it is already in TANF. They amended the bill to use the federal TANF grant so they don't have the systems related cost. The strength of the bill is it meets each individual's unique needs to move forward out of poverty. Continued education is the best latitude. In Montana jobs above minimum wage for women require education.

**{Tape: 2; Side: B; Approx. Time Counter: 11.3 - 24.9}**

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. GRIMES** thought this might open a door for people not on welfare to be tempted to get into the program. **REP. CAFERRO** said there is an income eligibility level for TANF was at 30% of

poverty. For a family of three, that is \$375 a month. Right there is a gatekeeper for who qualifies. The eligibility level is very low, you have to be extremely poor to qualify.

***{Tape: 2; Side: B; Approx. Time Counter: 24.9 - 30.6}***

**SEN. GRIMES** asked **Mr. Hudson's** response to the same question. **Mr. Hudson** said this is not unthinkable that someone would stop working and enter the TANF program to access college. There is no evidence this occurred. You have to drop into serious poverty to even be in the TANF program. In regard to the assessment issue and what courses are available, the bill states the department will write rules to engage in an assessment process to assure that the people in secondary education are qualified and have an idea of what they are doing. The courses would have to lead to self sufficiency.

***{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.6}***

**SEN. CROMLEY** asked the sponsor about the 20 or 30 hours work requirement. **REP. CAFERRO** told him when a family has TANF, they need to work for their cash grant. If they don't, they receive a sanction and lose their cash grant. The requirement is 30 hours a week of work activity. Parents with scholars can count education as a work activity. Some of the 30 hours a week could go for education for the family's first year. **SEN. CROMLEY** asked if all 30 hours could count as work activity. **REP. CAFERRO** said it can't because there is a childcare requirement saying, when you are in education, you need to work 10 hours a week. **SEN. CROMLEY** asked about the fiscal note had a technical concern. **REP. CAFERRO** answered that it was from before amendments. The original system was different from this fiscal note. This note is based on the amendments. She thinks they forgot to uncheck it.

**Closing by Sponsor:**

**REP. CAFERRO** thanked the Committee for the hearing. She said Montana has allowed education for TANF work for nearly ten years so there is a good history on how it works. Montana recently lost its waiver to count education. Prior to that Montana received bonuses for a successful program where people left TANF, went to work and increased earnings. Education is a critical path out of poverty. She would like to see parents have this opportunity.

**EXECUTIVE ACTION ON HB 183**

**Motion/Vote:** SEN. O'NEIL moved that HB 183 BE CONCURRED IN. Motion carried unanimously by voice vote. SEN. SCHMIDT voted aye by proxy.

SEN. WILLIAMS will carry the bill on the Senate floor.

**EXECUTIVE ACTION ON HB 437**

**Motion/Vote:** SEN. ESP moved that HB 437 BE CONCURRED IN. Motion carried unanimously by voice vote. SEN. SCHMIDT voted aye by proxy.

SEN. COBB will carry the bill on the Senate floor.

**EXECUTIVE ACTION ON HB 68**

**Motion:** SEN. GRIMES moved that HB 68 BE CONCURRED IN.

**Discussion:** SEN. GRIMES moved AMENDMENT HB068002.and BE ADOPTED.

**EXHIBIT (phs52a09)**

SEN. GRIMES said this changes the bill to only apply to circumstances in which drugs are being used as behavioral control mechanisms or non medicinal reasons. This makes all of sub section 2 on line 23 irrelevant because this does not get into whether or not how they apply it for emergency purposes. Regarding penalties, a person purposely or knowingly administering medicines for purposes of behavioral control, rather than non medicinal reasons, can get the penalty. Serious bodily injury to the child is changed from 20 to 10 years.

SEN. GRIMES withdrew his motion and requested to reconsider actions on the previous two amendments put on the bill in light of the actions previously described.

**Motion/Vote:** SEN. ESP moved TO AMEND THE BILL BY STRIPPING OUT ALL PREVIOUS AMENDMENTS AND BY RETURNING THE BILL TO ITS ORIGINAL FORM. Motion carried unanimously by voice vote.

**Motion:** SEN. GRIMES moved that AMENDMENT HB0060802.adn BE ADOPTED.

**Discussion:** SEN. O'NEIL thought the bill still allowed a parent to prescribe Ritalin to a child without doctor approval. He asked if the bill could be further amended to have a doctor's approval to give mind altering drugs to a child. This referred to line 20 and 21, without written authorization and signature of the child's parent or guardian. SEN. GRIMES answered that was a separate issue from his amendment which he hadn't contemplated. This would have to be a different amendment.

SEN. WEINBERG said, for the purpose of behavioral control, is a pretty subjective statement. He thought the person administering the medicine could say whatever they wanted to say the purpose is. If he was looking at ten years in prison, he would say something other than purposes of behavioral control. He thought behavior and not intent should be addressed.

SEN. WILLIAMS agreed that someone giving Benadryl to a child could say they were giving it to them for an allergy or a cold. They would never say it was for behavior.

SEN. WEINBERG thought if this could be restricted to behavior on the adult rather than their intent it might work.

*{Tape: 3; Side: A; Approx. Time Counter: 2.6 - 30.3}*

SEN. CROMLEY appointed a subcommittee of SEN. MOSS, SEN. WEINBERG, SEN. SCHMIDT, SEN. O'NEIL and David Niss to come up with a solution to the bill.

#### EXECUTIVE ACTION ON HB 318

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 6.3}*

**Motion:** SEN. ESP moved to RECONSIDER THE MOTION on HB 318. (tan copy). Motion carried unanimously.

**Discussion:**

**Motion:** SEN. ESP MOVED TO AMEND HB 318 BY RETURNING IT TO ITS ORIGINAL CONDITION AS IT CAME FROM THE HOUSE. (blue copy)

**EXHIBIT**(phs52a10)

**Discussion:** SEN. ESP said we should take out the diabetes mandates. This will put back education, treatment, services. It will strike equipment, and strike sub (3) on line 15, returning it to its original condition. His reasoning was the stack of

mandates on his desk and the discussions with the auditor's office and insurance companies relating to the bill.

**SEN. WEINBERG** resisted **SEN. ESP's** amendment saying if they left the pumps in, it would make it impossible for the insurance companies to provide the program. He wanted to keep the bill as it left the Committee.

**Motion/Vote:** **SEN. ESP** moved that HB031802.adn. DO PASS. Motion failed 4-5 by voice vote with **SEN. COBB**, **SEN. ESP**, **SEN. GRIMES** and **SEN. O'NEIL** voting yes.

**Motion/Vote:** **SEN. WEINBERG** moved that HB 318 BE CONCURRED IN AS AMENDED. Motion carried 5-4 by roll call vote with **SEN. COBB**, **SEN. ESP**, **SEN. GRIMES**, **SEN. O'NEIL** voting no. **SEN. COBB** voted no by proxy. **SEN. SCHMIDT** voted aye by proxy.

**SEN. GRIMES** will carry the bill on the Senate floor.

The bill now leaves the Committee in the same form as it did on March 4, 2005.

***{Tape: 3; Side: B; Approx. Time Counter: 6.3 - 16.9}***

**ADJOURNMENT**

Adjournment: 6:10 P.M.

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SEN. BRENT R. CROMLEY, Chairman

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RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

**EXHIBIT ([phs52aad0.PDF](#))**